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DEPARTMENT OF COMMERCE

International Trade Administration

C-533-821

Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Second Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On April 9, 2013, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department) January 2013 remand results.¹ The January 2013 remand results explained how the Department corroborated, to the extent practicable, the adverse facts available (AFA) rate assigned to Essar Steel Limited (Essar) in connection with the State Government of Chhattisgarh Industrial Policy (CIP) in the countervailing duty (CVD) administrative review of certain hot-rolled carbon steel flat products from India for the 2007 review period (the fifth review period or fifth administrative review).² Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,³ as clarified by *Diamond Sawblades*,⁴ the Department is notifying the public that the final CIT

¹ See *Essar Steel Limited v. United States*, Slip Op. 13-48, Court No. 09-197 (Ct. Int'l Trade April 9, 2013) (*Essar V*); Results of Redetermination Pursuant to Court Remand, *Essar Steel Limited v. United States*, Court Number 09-00197, Slip Op. 12-132 (CIT October 15, 2012) filed with the CIT on January 11, 2013 (January 2013 remand results).

² See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20,923 (May 6, 2009) (*Final Results*), and the accompanying Issues and Decision Memorandum (I&D Memorandum). The administrative review covering the 2007 period is the fifth administrative review of the countervailing duty order on HRCS from India. The administrative review covering the 2006 period is the "fourth" administrative review. See *Final Results*, and the accompanying I&D Memorandum at "Sale of High-Grade Iron Ore for LTAR" section (referring to the 2006 administrative review as the fourth administrative review).

³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

judgment in this case is not in harmony with the Department's *Amended Final Results*⁵ and is, therefore, amending the *Amended Final Results*.

EFFECTIVE DATE: April 19, 2013

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, C129, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-2209.

SUPPLEMENTARY INFORMATION: On May 6, 2009, the Department published its *Final Results*.⁶ In the *Final Results*, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), the Department applied AFA to find that the subprograms under the CIP constituted financial contributions that were specific and that Essar used and benefited from the subprograms under the CIP.⁷ The Department attempted to calculate an individual rate for Essar based on the benefit received from the CIP programs but, because it was unable to obtain the necessary information from Essar, it relied on secondary information to determine a rate.⁸ Specifically, the Department used the highest above *de minimis* subsidy rate calculated for similar programs (from prior segments of this proceeding) involving grants, the provision of goods for less than adequate remuneration (LTAR), and indirect taxes.⁹

In *Essar I*, the CIT remanded Commerce's AFA determination that Essar benefited from the CIP.¹⁰ The CIT explained that the Department's conclusions in its July 2010 remand redetermination regarding the fourth administrative review in this proceeding, in which the Department found that Essar did not benefit from the CIP based on documents on the fourth

⁵ See *Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision*, 76 FR 7810 (February 11, 2011) (*Amended Final Results*).

⁶ See *Final Results*.

⁷ See *Final Results*, and the accompanying I&D Memorandum at 3-7 and Comment 2.

⁸ *Id.* at 22-26.

⁹ *Id.*

¹⁰ *Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285, 1301 (CIT 2010) (*Essar I*).

administrative review remand record, cast “grave doubt” upon the Department’s findings that Essar benefited from the CIP during the fifth review period.¹¹ Thus, the CIT ordered the Department to reopen and place on the administrative record of the fifth administrative review certain documents from the fourth administrative review remand proceeding, and to consider those documents in its reassessment of whether Essar benefited from the CIP.¹²

On October 28, 2010, the Department issued its final results of redetermination pursuant to *Essar I*. The remand redetermination explained that, in accordance with the CIT’s order, and under respectful protest, the Department placed certain documents from the fourth administrative review remand proceeding on the record of the fifth administrative review. In light of certain statements by the CIT in *Essar I* and those documents that the CIT ordered the Department to place on the administrative record, the Department reassessed whether Essar benefited from the CIP during the fifth review period and determined that Essar did not.¹³ The Department’s redetermination resulted in a change to the *Final Results* concerning Essar’s net subsidy rate for the CIP from 54.69 percent to zero.¹⁴ Therefore, Essar’s total net countervailable rate from the *Final Results*, 76.88 percent, decreased by 54.69 percentage points to a total net countervailable subsidy rate of 22.19 percent.¹⁵ The CIT sustained the Department’s remand redetermination on

¹¹ *Id.* at 1300; see also *Final Results of Redetermination Pursuant to Court Remand, United States Steel Corp. v. United States*, CIT No., 08-239 (Department of Commerce July 15, 2010) (*Fourth Administrative Review Redetermination*) at 5-6, 22-23.

¹² *Essar I* at 1301.

¹³ See *Final Results of Redetermination Pursuant to Court Remand, Essar Steel Limited. v. United States*, Court No., 09-00197 (Department of Commerce October 28, 2010) at 16 (*Essar I Remand Redetermination*).

¹⁴ *Id.* at 16-17.

¹⁵ *Id.* In *Essar I Remand Redetermination*, the Department inadvertently stated that Essar’s total net countervailable subsidy rate from the *Final Results*, 76.88 percent, decreased by 54.69 percentage points, to a total net countervailable subsidy rate of 22.19 percent. See also the *Amended Final Results*. However, Essar’s AFA rate for the CIP in the *Final Results* was 54.68 percent *ad valorem*, not 54.69 percent *ad valorem*. Therefore, the correct AFA rate for Essar is 54.68 percent *ad valorem*, which is the AFA rate from the *Final Results*. The final net subsidy rate for Essar is the same rate as the rate from the *Final Results*, 76.88 *ad valorem*.

January 25, 2011, in *Essar II*.¹⁶

On February 11, 2011, the Department published the *Amended Final Results*, amending the total net countervailable subsidy rate for Essar for the period January 1, 2007, through December 31, 2007, and cash deposit rate to 22.19 percent.¹⁷ The Department instructed U.S. Customs and Border Protection (CBP) to collect cash deposits for Essar at the cash deposit rate of 22.19 percent.

The CIT's ruling in *Essar II* was appealed to the CAFC. In *Essar III*, the CAFC reversed the CIT's decision concerning the application of AFA with respect to the CIP and upheld the Department's application of AFA with respect to Essar's participation in the CIP as supported by substantial evidence.¹⁸ Subsequently, the case returned to the CIT, which remanded the case for Commerce to address the outstanding issue of corroboration of the AFA rate the Department had applied to Essar for the CIP in the *Final Results*.¹⁹ The CIT stated that the Department "explained its methodology for calculating the AFA rate assigned to Essar for its participation in the CIP programs but did not discuss the specific issue of corroboration."²⁰ Therefore, the Court remanded the case for the Department to explain how it corroborated Essar's AFA rate or explain why corroboration is not practicable.²¹

On January 11, 2013, the Department filed with the CIT its remand results explaining how it corroborated, to the extent practicable, the AFA rate it had assigned to Essar in the *Final Results*.²² On April 9, 2013, the CIT sustained the Department's remand results, holding that the

¹⁶ See *Essar Steel Limited v. United States*, Slip Op. 11-10, Court No. 09-197 (Ct Int'l Trade January 25, 2011) (*Essar II*).

¹⁷ *Amended Final Results*, 76 FR at 7811.

¹⁸ See *Essar Steel Limited v. United States*, 678 F.3d 1268, 1278-1279 (CAFC 2012) (*Essar III*).

¹⁹ *Essar Steel Limited v. United States*, 880 F. Supp. 2d 1327, 1332 (CIT 2012) (*Essar IV*).

²⁰ *Essar IV* at 1330.

²¹ *Id.* at 1331.

²² See January 2013 remand results.

Department “corroborated Essar’s AFA rate to the extent practicable by utilizing calculated benefits from similar programs identified in this CVD proceeding.”²³

Amended Final Results

The CIT's April 9, 2013, judgment in *Essar V* sustaining the Department’s corroboration of the AFA rate for Essar (54.68 percent *ad valorem*), constitutes a final decision of that court that is not in harmony with the Department’s *Amended Final Results*.²⁴ Because there is now a final CIT decision, the Department amends its *Amended Final Results*. The following total countervailable net subsidy rate exists for the 2007 period of review:

Company	<i>Ad Valorem</i> Net Subsidy Rate
Essar Steel Limited	76.88 percent <i>ad valorem</i>

²³ See *Essar V*.

²⁴ See section 516A of the Act; *Timken*, 893 F.2d at 341; *Diamond Sawblades*, 626 F.3d 1374.

The cash deposit rate for Essar is also 76.88 percent. The Department will instruct CBP to collect cash deposits for Essar at the rate indicated.

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to assess countervailing duties on entries of the subject merchandise during the 2007 review period from Essar based on the revised assessment rate determined by the Department.

This notice is issued and published in accordance with sections 516A(e), 751(a), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

April 25, 2013 ____

Date

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